

## **REMARKS**

Upon entry of the amended claim set, claims 35, 41, 43 and 45 to 80 will be pending. Claims 1, 25 to 34, 36 to 40, 42 and 44 have been cancelled without prejudice or disclaimer. Applicant reserves the right to pursue the subject matter of the cancelled claims in a timely-filed continuation, continuation-in-part, or divisional application.

Claim 35, currently on file, has been amended to more clearly define the scope of protection being sought. New claims 45 to 80 have been added to claim additional embodiments of the present invention. Applicant asserts that no new matter has been added by way of these amendments. Support for the amendments and new claims can be found throughout the specification as filed and as outlined below.

Support for the methods recited in new independent claims 54, 61 and 71 can be found throughout the application as filed, for example, at page 50, line 15 to page 51, line 2, and in Example IV.

Support for the plants recited in amended claim 35, and in new claims 67 and 77, can be found, for example, at page 27, line 26 to page 28, line 7, and in Tables 13 and 14.

Support for plant extracts derived from plants subjected to one or more stress as recited in new claims 45 to 47, 55 to 57, 62 to 64, and 72 to 74, can be found, for example, at page 28, line 9, to page 30, line 29, and in the Examples.

Support for the specific plant extracts recited in new claims 48, 58, 65, 68, 75 and 78, can be found, for example, in Tables 13 and 14.

Support for the solvents as recited in new claims 49, 59, 66 and 76, can be found, for example, at page 32, lines 19 to 23; at page 33, line 13 to page 34, line 10, and in the Examples.

Support for the routes of administration as recited in new claims 50, 51, 69, 70, 79 and 80, can be found, for example, at page 46, lines 15 to 18, and at page 47, lines 21 to 24.

Support for nutraceutical and pharmaceutical formulations as recited in new claims 52 and 53, can be found, for example, at page 45, line 21 to page 50, line 14.

Support for the *in vivo* method recited in new claim 60 can be found, for example, at page 50, lines 16 to 24.

### **Election**

Applicant elects, with traverse, Group I drawn to a plant extract. Applicant further elects, with traverse, the following species:

From the group “various specific MMPs”: MMP-9.

From the group “various unclaimed extracts”: a plant extract from *Solidago* spp.

From the group “which are derived from various unclaimed plants”: *Solidago* spp.

From the group “different functions such as angiogenesis and metastasis”:  
neoplastic cell migration.

Applicant asserts that new claims 45 to 80 are drawn to formulations comprising plant extracts and methods of using the formulations and, therefore, should be examined with elected Group I.

### **Remarks**

The claims currently pending stand restricted under 35 U.S.C. 121 and 372 into the following groups as defined by the Examiner at page 2 of the Office Action:

Group I, claims 1, 25-30 and 35-42, drawn to a plant extract.

Group II, claims 31-34, drawn to a library of plant extracts.

The Examiner has further alleged that the application contains claims that are directed to more than one species of the generic invention. The Examiner has identified the species as follows:

Various specific MMPs.

Various unclaimed extracts.

Which are derived from various unclaimed plants.

Different functions such as angiogenesis and metastasis.

The Examiner alleged that Groups I and II and the species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding technical features. The Examiner has stated that the common technical feature of the two Groups and species is a plant extract that inhibits the activity of MMP, which the Examiner alleged is not novel in light of each of Pauly (U.S. Patent Application No. 2004/0234480) and Koji (U.S. Patent Application No. 2003/0099631).

Applicant respectfully traverses for the following reasons. Firstly, the claims currently on file, relate to plant extracts that not only inhibit at least one of MMP-1, MMP-2, MMP-3, MMP-9, and cathepsin B, but which are also capable of slowing down or inhibiting migration of endothelial and/or neoplastic cells. PCT Rule 13.2 states that in order to fulfill the requirement of unity of invention under Rule 13.1, there must be “a technical relationship among those inventions involving one or more of the same or corresponding special technical features.” “Special technical features” are defined as “those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.” Applicant asserts that neither Pauly nor Koji disclose plant extracts capable of inhibiting cell migration. In this regard, Applicant notes that Koji in fact relates to a novel MMP and discusses plant extracts only in the context of screening for inhibitors of this novel MMP. Koji does not describe any specific plant extracts that inhibit at least one of MMP-1, MMP-2, MMP-3, MMP-9, and cathepsin B, as recited in the currently pending claims.

For the reasons set forth above, Applicant maintains that the currently pending claims are linked by a single inventive concept, which defines a contribution over the cited art, and that the Examiner has not *prima facie* established that the currently pending claims lack unity of invention under PCT Rule 13.1. Claim 35 is believed to be generic.

Solely in order to expedite prosecution of the instant application, however, Applicant has elected, with traverse, Group I drawn to a plant extract. The Examiner has stated that Group I consists of claims 1, 25-30 and 35-42. Applicant believes, however, that the Examiner intended to include in this Group, claims 43 and 44, currently on file, which are also directed to a plant extract. Applicant has, therefore, made the above election on this basis.

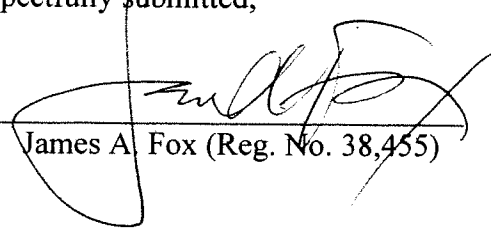
Applicant has cancelled claims 1, 25 to 34, 36 to 40, 42 and 44, without prejudice or disclaimer, and has added new claims 45 to 80. Applicant asserts that, as new claims 45 to 80 are directed to formulations comprising the plant extracts and methods of using the plant extracts, the new claims should be examined with elected Group I. In this regard, Applicant respectfully directs the Examiner to Section (e)(i) of Annex B of the PCT Administrative Instructions, which permits, for the purposes of determining unity of invention under Rule 13.2 "claims of different categories in the same international application: (i) in addition to an independent claim for a given product, an independent claim for a process specially adapted for the manufacture of the said product, and an independent claim for a use of said product." Applicant accordingly asserts that unity of invention under the terms of PCT Administrative Instructions, Annex B, Section (e)(i) exists with respect to the new claims since the claims meet the criteria for combinations of claims of different categories, namely a given product, *i.e.* a formulation comprising one or more plant extracts, and methods of using the product.

Moreover, Applicant notes that the amended claims recite extracts from a group of specifically named plants. Applicant asserts that, as such, there is no serious burden on the Examiner to search and examine all the amended claims in a single application.

The Commissioner is authorized to charge fees for extension of time, and any additional fees which may be required, including petition fees and extension of time fees, and to credit any overpayment, to Deposit Account No. 08-1641, referencing Attorney's Docket No. 41313-1003.

Respectfully submitted,

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